

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SENATE BILL 1029

AN ACT

AMENDING SECTIONS 28-1381, 28-1382 AND 28-3319, ARIZONA REVISED STATUTES;
RELATING TO DRIVING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 28-1381, Arizona Revised Statutes, is amended to
3 read:

4 28-1381. Driving or actual physical control while under the
5 influence; trial by jury; presumptions; admissible
6 evidence; sentencing; classification

7 A. It is unlawful for a person to drive or be in actual physical
8 control of a vehicle in this state under any of the following circumstances:

9 1. While under the influence of intoxicating liquor, any drug, a vapor
10 releasing substance containing a toxic substance or any combination of
11 liquor, drugs or vapor releasing substances if the person is impaired to the
12 slightest degree.

13 2. If the person has an alcohol concentration of 0.08 or more within
14 two hours of driving or being in actual physical control of the vehicle and
15 the alcohol concentration results from alcohol consumed either before or
16 while driving or being in actual physical control of the vehicle.

17 3. While there is any drug defined in section 13-3401 or its
18 metabolite in the person's body.

19 4. If the vehicle is a commercial motor vehicle that requires a person
20 to obtain a commercial driver license as defined in section 28-3001 and the
21 person has an alcohol concentration of 0.04 or more.

22 B. It is not a defense to a charge of a violation of subsection A,
23 paragraph 1 of this section that the person is or has been entitled to use
24 the drug under the laws of this state.

25 C. A person who is convicted of a violation of this section is guilty
26 of a class 1 misdemeanor.

27 D. A person using a drug prescribed by a medical practitioner licensed
28 pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of violating
29 subsection A, paragraph 3 of this section.

30 E. In any prosecution for a violation of this section, the state shall
31 allege, for the purpose of classification and sentencing pursuant to this
32 section, all prior convictions of violating this section, section 28-1382 or
33 section 28-1383 occurring within the past thirty-six months, unless there is
34 an insufficient legal or factual basis to do so.

35 F. At the arraignment, the court shall inform the defendant that the
36 defendant may request a trial by jury and that the request, if made, shall be
37 granted.

38 G. In a trial, action or proceeding for a violation of this section or
39 section 28-1383 other than a trial, action or proceeding involving driving or
40 being in actual physical control of a commercial vehicle, the defendant's
41 alcohol concentration within two hours of the time of driving or being in
42 actual physical control as shown by analysis of the defendant's blood, breath
43 or other bodily substance gives rise to the following presumptions:

44 1. If there was at that time 0.05 or less alcohol concentration in the
45 defendant's blood, breath or other bodily substance, it may be presumed that
46 the defendant was not under the influence of intoxicating liquor.

1 2. If there was at that time in excess of 0.05 but less than 0.08
2 alcohol concentration in the defendant's blood, breath or other bodily
3 substance, that fact shall not give rise to a presumption that the defendant
4 was or was not under the influence of intoxicating liquor, but that fact may
5 be considered with other competent evidence in determining the guilt or
6 innocence of the defendant.

7 3. If there was at that time 0.08 or more alcohol concentration in the
8 defendant's blood, breath or other bodily substance, it may be presumed that
9 the defendant was under the influence of intoxicating liquor.

10 H. Subsection G of this section does not limit the introduction of any
11 other competent evidence bearing on the question of whether or not the
12 defendant was under the influence of intoxicating liquor.

13 I. A person who is convicted of a violation of this section:

14 1. Shall be sentenced to serve not less than ten consecutive days in
15 jail and is not eligible for probation or suspension of execution of sentence
16 unless the entire sentence is served.

17 2. Shall pay a fine of not less than two hundred fifty dollars.

18 3. May be ordered by a court to perform community restitution.

19 4. Shall pay an additional assessment of five hundred dollars to be
20 deposited by the state treasurer in the prison construction and operations
21 fund established by section 41-1651. This assessment is not subject to any
22 surcharge. If the conviction occurred in the superior court or a justice
23 court, the court shall transmit the assessed monies to the county
24 treasurer. If the conviction occurred in a municipal court, the court shall
25 transmit the assessed monies to the city treasurer. The city or county
26 treasurer shall transmit the monies received to the state treasurer.

27 5. Shall pay an additional assessment of five hundred dollars to be
28 deposited by the state treasurer in the state general fund. This assessment
29 is not subject to any surcharge. If the conviction occurred in the superior
30 court or a justice court, the court shall transmit the assessed monies to the
31 county treasurer. If the conviction occurred in a municipal court, the court
32 shall transmit the assessed monies to the city treasurer. The city or county
33 treasurer shall transmit the monies received to the state treasurer.

34 6. SHALL BE REQUIRED BY THE DEPARTMENT, ON REPORT OF THE CONVICTION,
35 TO EQUIP ANY MOTOR VEHICLE THE PERSON OPERATES WITH A CERTIFIED IGNITION
36 INTERLOCK DEVICE PURSUANT TO SECTION 28-3319. IN ADDITION, THE COURT MAY
37 ORDER THE PERSON TO EQUIP ANY MOTOR VEHICLE THE PERSON OPERATES WITH A
38 CERTIFIED IGNITION INTERLOCK DEVICE FOR MORE THAN TWELVE MONTHS BEGINNING ON
39 THE DATE OF REINSTATEMENT OF THE PERSON'S DRIVING PRIVILEGE FOLLOWING A
40 SUSPENSION OR REVOCATION OR ON THE DATE OF THE DEPARTMENT'S RECEIPT OF THE
41 REPORT OF CONVICTION, WHICHEVER OCCURS LATER. THE PERSON WHO OPERATES A
42 MOTOR VEHICLE WITH A CERTIFIED IGNITION INTERLOCK DEVICE UNDER THIS PARAGRAPH
43 SHALL COMPLY WITH ARTICLE 5 OF THIS CHAPTER.

44 J. Notwithstanding subsection I, paragraph 1 of this section, at the
45 time of sentencing the judge may suspend all but twenty-four consecutive
46 hours of the sentence if the person completes a court ordered alcohol or

1 other drug screening, education or treatment program. If the person fails to
2 complete the court ordered alcohol or other drug screening, education or
3 treatment program and has not been placed on probation, the court shall issue
4 an order to show cause to the defendant as to why the remaining jail sentence
5 should not be served.

6 K. If within a period of eighty-four months a person is convicted of a
7 second violation of this section or is convicted of a violation of this
8 section and has previously been convicted of a violation of section 28-1382
9 or 28-1383 or an act in another jurisdiction that if committed in this state
10 would be a violation of this section or section 28-1382 or 28-1383, the
11 person:

12 1. Shall be sentenced to serve not less than ninety days in jail,
13 thirty days of which shall be served consecutively, and is not eligible for
14 probation or suspension of execution of sentence unless the entire sentence
15 has been served.

16 2. Shall pay a fine of not less than five hundred dollars.

17 3. Shall be ordered by a court to perform at least thirty hours of
18 community restitution.

19 4. Shall have the person's driving privilege revoked for one
20 year. The court shall report the conviction to the department. On receipt
21 of the report, the department shall revoke the person's driving privilege and
22 shall require the person to equip any motor vehicle the person operates with
23 a certified ignition interlock device pursuant to section 28-3319. In
24 addition, the court may order the person to equip any motor vehicle the
25 person operates with a certified ignition interlock device for more than
26 twelve months beginning on the date of reinstatement of the person's driving
27 privilege following a suspension or revocation or on the date of the
28 department's receipt of the report of conviction, whichever occurs
29 later. The person who operates a motor vehicle with a certified ignition
30 interlock device under this paragraph shall comply with article 5 of this
31 chapter.

32 5. Shall pay an additional assessment of one thousand two hundred
33 fifty dollars to be deposited by the state treasurer in the prison
34 construction and operations fund established by section 41-1651. This
35 assessment is not subject to any surcharge. If the conviction occurred in
36 the superior court or a justice court, the court shall transmit the assessed
37 monies to the county treasurer. If the conviction occurred in a municipal
38 court, the court shall transmit the assessed monies to the city
39 treasurer. The city or county treasurer shall transmit the monies received
40 to the state treasurer.

41 6. Shall pay an additional assessment of one thousand two hundred
42 fifty dollars to be deposited by the state treasurer in the state general
43 fund. This assessment is not subject to any surcharge. If the conviction
44 occurred in the superior court or a justice court, the court shall transmit
45 the assessed monies to the county treasurer. If the conviction occurred in a
46 municipal court, the court shall transmit the assessed monies to the city

1 treasurer. The city or county treasurer shall transmit the monies received
2 to the state treasurer.

3 L. Notwithstanding subsection K, paragraph 1 of this section, at the
4 time of sentencing, the judge may suspend all but thirty days of the sentence
5 if the person completes a court ordered alcohol or other drug screening,
6 education or treatment program. If the person fails to complete the court
7 ordered alcohol or other drug screening, education or treatment program and
8 has not been placed on probation, the court shall issue an order to show
9 cause as to why the remaining jail sentence should not be served.

10 M. In applying the eighty-four month provision of subsection K of this
11 section, the dates of the commission of the offense shall be the determining
12 factor, irrespective of the sequence in which the offenses were committed.

13 N. A second violation for which a conviction occurs as provided in
14 this section shall not include a conviction for an offense arising out of the
15 same series of acts.

16 Sec. 2. Section 28-1382, Arizona Revised Statutes, is amended to read:

17 28-1382. Driving or actual physical control while under the
18 extreme influence of intoxicating liquor; trial by
19 jury; sentencing; classification

20 A. It is unlawful for a person to drive or be in actual physical
21 control of a vehicle in this state if the person has an alcohol concentration
22 of 0.15 or more within two hours of driving or being in actual physical
23 control of the vehicle and the alcohol concentration results from alcohol
24 consumed either before or while driving or being in actual physical control
25 of the vehicle.

26 B. A person who is convicted of a violation of this section is guilty
27 of driving or being in actual physical control of a vehicle while under the
28 extreme influence of intoxicating liquor.

29 C. At the arraignment, the court shall inform the defendant that the
30 defendant may request a trial by jury and that the request, if made, shall be
31 granted.

32 D. A person who is convicted of a violation of this section:

33 1. EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, shall be sentenced
34 to serve not less than thirty consecutive days in jail and is not eligible
35 for probation or suspension of execution of sentence unless the entire
36 sentence is served. A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE
37 SHALL BE SENTENCED TO SERVE NOT LESS THAN FORTY-FIVE CONSECUTIVE DAYS IN JAIL
38 AND IS NOT ELIGIBLE FOR PROBATION OR SUSPENSION OF EXECUTION OF SENTENCE
39 UNLESS THE ENTIRE SENTENCE IS SERVED.

40 2. Shall pay a fine of not less than two hundred fifty dollars, EXCEPT
41 THAT A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE SHALL PAY A
42 FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS. The fine prescribed in this
43 paragraph and any assessments, restitution and incarceration costs shall be
44 paid before the assessment prescribed in paragraph 3 of this subsection.

45 3. Shall pay an additional assessment of two hundred fifty dollars. If
46 the conviction occurred in the superior court or a justice court, the court

1 shall transmit the monies received pursuant to this paragraph to the county
2 treasurer. If the conviction occurred in a municipal court, the court shall
3 transmit the monies received pursuant to this paragraph to the city
4 treasurer. The city or county treasurer shall transmit the monies received
5 to the state treasurer. The state treasurer shall deposit the monies
6 received in the driving under the influence abatement fund established by
7 section 28-1304.

8 4. May be ordered by a court to perform community restitution.

9 5. Shall be required by the department, on receipt of the report of
10 conviction, to equip any motor vehicle the person operates with a certified
11 ignition interlock device pursuant to section 28-3319. In addition, the
12 court may order the person to equip any motor vehicle the person operates
13 with a certified ignition interlock device for more than twelve months
14 beginning on the date of reinstatement of the person's driving privilege
15 following a suspension or revocation or on the date of the department's
16 receipt of the report of conviction, whichever occurs later. The person who
17 operates a motor vehicle with a certified ignition interlock device under
18 this paragraph shall comply with article 5 of this chapter.

19 6. Shall pay an additional assessment of one thousand dollars to be
20 deposited by the state treasurer in the prison construction and operations
21 fund established by section 41-1651. This assessment is not subject to any
22 surcharge. If the conviction occurred in the superior court or a justice
23 court, the court shall transmit the assessed monies to the county
24 treasurer. If the conviction occurred in a municipal court, the court shall
25 transmit the assessed monies to the city treasurer. The city or county
26 treasurer shall transmit the monies received to the state treasurer.

27 7. Shall pay an additional assessment of one thousand dollars to be
28 deposited by the state treasurer in the state general fund. This assessment
29 is not subject to any surcharge. If the conviction occurred in the superior
30 court or a justice court, the court shall transmit the assessed monies to the
31 county treasurer. If the conviction occurred in a municipal court, the court
32 shall transmit the assessed monies to the city treasurer. The city or county
33 treasurer shall transmit the monies received to the state treasurer.

34 E. Notwithstanding subsection D, paragraph 1 of this section, at the
35 time of sentencing **IF THE PERSON HAS AN ALCOHOL CONCENTRATION OF LESS THAN**
36 **0.20**, the judge may suspend all but ten days of the sentence if the person
37 completes a court ordered alcohol or other drug screening, education or
38 treatment program. If the person fails to complete the court ordered alcohol
39 or other drug screening, education or treatment program and has not been
40 placed on probation, the court shall issue an order to show cause to the
41 defendant as to why the remaining jail sentence should not be served.

42 F. If within a period of eighty-four months a person is convicted of a
43 second violation of this section or is convicted of a violation of this
44 section and has previously been convicted of a violation of section 28-1381
45 or 28-1383 or an act in another jurisdiction that if committed in this state

1 would be a violation of this section or section 28-1381 or 28-1383, the
2 person:

3 1. EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, shall be sentenced
4 to serve not less than one hundred twenty days in jail, sixty days of which
5 shall be served consecutively, and is not eligible for probation or
6 suspension of execution of sentence unless the entire sentence has been
7 served. A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE SHALL BE
8 SENTENCED TO SERVE NOT LESS THAN ONE HUNDRED EIGHTY DAYS IN JAIL, NINETY OF
9 WHICH SHALL BE SERVED CONSECUTIVELY, AND IS NOT ELIGIBLE FOR PROBATION OR
10 SUSPENSION OF EXECUTION OF SENTENCE UNLESS THE ENTIRE SENTENCE HAS BEEN
11 SERVED.

12 2. Shall pay a fine of not less than five hundred dollars, EXCEPT THAT
13 A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE SHALL PAY A FINE OF
14 NOT LESS THAN ONE THOUSAND DOLLARS. The fine prescribed in this paragraph
15 and any assessments, restitution and incarceration costs shall be paid before
16 the assessment prescribed in paragraph 3 of this subsection.

17 3. Shall pay an additional assessment of two hundred fifty
18 dollars. If the conviction occurred in the superior court or a justice
19 court, the court shall transmit the monies received pursuant to this
20 paragraph to the county treasurer. If the conviction occurred in a municipal
21 court, the court shall transmit the monies received pursuant to this
22 paragraph to the city treasurer. The city or county treasurer shall transmit
23 the monies received to the state treasurer. The state treasurer shall
24 deposit the monies received in the driving under the influence abatement fund
25 established by section 28-1304.

26 4. Shall be ordered by a court to perform at least thirty hours of
27 community restitution.

28 5. Shall have the person's driving privilege revoked for at least one
29 year. The court shall report the conviction to the department. On receipt
30 of the report, the department shall revoke the person's driving privilege and
31 shall require the person to equip any motor vehicle the person operates with
32 a certified ignition interlock device pursuant to section 28-3319. In
33 addition, the court may order the person to equip any motor vehicle the
34 person operates with a certified ignition interlock device for more than
35 twelve months beginning on the date of reinstatement of the person's driving
36 privilege following a suspension or revocation or on the date of the
37 department's receipt of the report of conviction, whichever is later. The
38 person who operates a motor vehicle with a certified ignition interlock
39 device under this paragraph shall comply with article 5 of this chapter.

40 6. Shall pay an additional assessment of one thousand two hundred
41 fifty dollars to be deposited by the state treasurer in the prison
42 construction and operations fund established by section 41-1651. This
43 assessment is not subject to any surcharge. If the conviction occurred in
44 the superior court or a justice court, the court shall transmit the assessed
45 monies to the county treasurer. If the conviction occurred in a municipal
46 court, the court shall transmit the assessed monies to the city treasurer.

1 The city or county treasurer shall transmit the monies received to the state
2 treasurer.

3 7. Shall pay an additional assessment of one thousand two hundred
4 fifty dollars to be deposited by the state treasurer in the state general
5 fund. This assessment is not subject to any surcharge. If the conviction
6 occurred in the superior court or a justice court, the court shall transmit
7 the assessed monies to the county treasurer. If the conviction occurred in a
8 municipal court, the court shall transmit the assessed monies to the city
9 treasurer. The city or county treasurer shall transmit the monies received
10 to the state treasurer.

11 G. Notwithstanding subsection F, paragraph 1 of this section, at the
12 time of sentencing, **IF THE PERSON HAS AN ALCOHOL CONCENTRATION OF LESS THAN**
13 **0.20**, the judge may suspend all but sixty days of the sentence if the person
14 completes a court ordered alcohol or other drug screening, education or
15 treatment program. If the person fails to complete the court ordered alcohol
16 or other drug screening, education or treatment program and has not been
17 placed on probation, the court shall issue an order to show cause as to why
18 the remaining jail sentence should not be served.

19 H. In applying the eighty-four month provision of subsection F of this
20 section, the dates of the commission of the offense shall be the determining
21 factor, irrespective of the sequence in which the offenses were committed.

22 I. A second violation for which a conviction occurs as provided in
23 this section shall not include a conviction for an offense arising out of the
24 same series of acts.

25 J. A person who is convicted of a violation of this section is guilty
26 of a class 1 misdemeanor.

27 Sec. 3. Section 28-3319, Arizona Revised Statutes, is amended to read:

28 **28-3319. Action after license suspension, revocation or denial**
29 **for driving under the influence or refusal of test;**
30 **ignition interlock device requirement; definition**

31 A. If, pursuant to section 28-1321, 28-1381, 28-1382, 28-1383, 28-3320
32 or 28-3322, the license of a driver or the driving privilege of a nonresident
33 is suspended or revoked, the department shall not terminate the suspension or
34 revocation or issue a special ignition interlock restricted driver license,
35 if applicable, pursuant to chapter 4, article 3.1 of this title until the
36 person provides proof of financial responsibility pursuant to chapter 9,
37 article 3 of this title.

38 B. If, pursuant to section 28-1321, 28-1381, 28-1382, 28-1383, 28-3320
39 or 28-3322, an unlicensed resident is denied a license or permit to operate a
40 motor vehicle, the department shall not issue a license or permit until the
41 person provides proof of financial responsibility pursuant to chapter 9,
42 article 3 of this title.

43 C. If a person whose license or driving privilege is suspended or
44 revoked pursuant to section 28-1321, 28-1381, 28-1382 or 28-1383 is ordered,
45 pursuant to section 28-1381, 28-1382 or 28-1383, to attend alcohol or other
46 drug screening, education or treatment, the department shall not either:

1 1. Terminate the suspension or issue a special ignition interlock
2 restricted driver license, if applicable, pursuant to chapter 4, article 3.1
3 of this title until the person provides proof from the treatment facility
4 that the person has completed or is participating satisfactorily in alcohol
5 or other drug screening, education or treatment.

6 2. Issue a new license or a special ignition interlock restricted
7 driver license, if applicable, pursuant to chapter 4, article 3.1 of this
8 title to operate a motor vehicle after the revocation until the person
9 provides proof from the facility that the person has completed the court
10 ordered program.

11 D. On receipt of a report of conviction from a court, the department
12 shall require any motor vehicle the convicted person operates to be equipped
13 with a functioning certified ignition interlock device and the convicted
14 person to meet the requirements prescribed in section 28-1461 for twelve
15 months if any of the following applies:

16 1. The department determines that within a period of eighty-four
17 months a person is convicted of a second or subsequent violation of section
18 28-1381 with a prior conviction of a violation of section 28-1381 or 28-1382
19 or an act in another jurisdiction that if committed in this state would be a
20 violation of section 28-1381 or 28-1382.

21 2. The ~~conviction is for a violation of~~ PERSON IS SENTENCED PURSUANT
22 TO section 28-1381 OR 28-1382, SUBSECTION D, EXCEPT THAT IF THE PERSON'S
23 ALCOHOL CONCENTRATION IS 0.20 OR MORE, THE CERTIFIED IGNITION INTERLOCK
24 DEVICE IS REQUIRED FOR EIGHTEEN MONTHS.

25 3. THE PERSON IS SENTENCED PURSUANT TO SECTION 28-1382, SUBSECTION F,
26 EXCEPT THAT IF THE PERSON'S ALCOHOL CONCENTRATION IS 0.20 OR MORE, THE
27 CERTIFIED IGNITION INTERLOCK DEVICE IS REQUIRED FOR TWENTY-FOUR MONTHS.

28 ~~3-~~ 4. The conviction is for a violation of section 28-1383,
29 subsection A, paragraph 1, 2 or 4 or paragraph 3, subdivision (b).

30 E. The ~~twelve-month-period~~ REQUIREMENT prescribed in subsection D of
31 this section begins on the date of reinstatement of the person's driving
32 privilege following a suspension or revocation or on the date of the
33 department's receipt of the report of conviction, whichever occurs later.

34 F. A person who is required to equip a motor vehicle with a certified
35 ignition interlock device pursuant to subsection D of this section shall
36 comply with chapter 4, article 5 of this title.

37 G. For the purposes of this section, "certified ignition interlock
38 device" has the same meaning prescribed in section 28-1301.